

Cotter Corporation
General Office

303-980-1232
2596 WEST BAYAUD AVENUE, SUITE 350
LAKEWOOD COLORADO 80226

February 26, 1990

Mr. Robert M. Bernero
Director
Office of Nuclear Materials
Safety and Safeguards
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

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|-----------------------------|
| Site: <u>Westlake Ld Fl</u> |
| ID #: <u>MOB 79900932</u> |
| Project: <u>H-16</u> |
| Owner: <u>Cotter Corp</u> |
| 2-26-90 |

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Dear Mr. Bernero:

We have received your most recent letter advising that the provisions of 10 C.F.R. part 40 appendix are appropriate guidance for disposal of radioactive material found in the Westlake landfill. We appreciate receipt of the information since it will provide some assistance in our evaluation. However, we still have unresolved the remaining two primary concerns which have been raised with your staff, and the Office of General Counsel. Namely:

1. Our position that any action which may be taken to remediate conditions at the Westlake landfill be subject to unitary regulatory jurisdiction and oversight.
2. Our need to have access to the documents, data and other information pertaining to the acquisition, processing or other treatment, handling and disposition by the United States or its contractors, of the radioactive material now asserted to be in the Westlake landfill.

As you know, answers to both of these issues are critical to our determination of the role, if any, which Cotter might agree to in dealing with the Westlake landfill. We understand from conversations with Robert Fonner that he has raised with U.S. EPA the jurisdictional issue created by potentially overlapping N.R.C. and EPA regulatory authorities, and the proposed listing of the Westlake landfill on the National Priority List. The information which he conveyed to us indicates that there is a very serious potential that any remediation of the radioactive materials at Westlake by a private party may be seriously impeded and complicated by dual regulation.



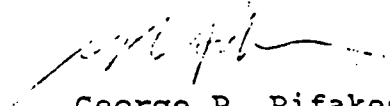
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Cotter is, of course, powerless to resolve the jurisdictional issues between U.S. EPA and N.R.C. It is our firm belief, however, that unless resolution of this issue is reached in advance of any undertakings by us, all parties and the public will be subjected to unwarranted burdens, cost and delay.

With respect to the historical information concerning the materials, Mr. Fonner advised us in early January that an effort was being made to locate and make those records available. We have not heard further from him. Cotter cannot make a responsible decision about its possible role in the matter without access to the historical information, nor can it make prudent decisions about the roles of other parties who have owned, had possession or otherwise been involved with the material. Information with respect to the original nature and form of the material and the manner in which it has been processed or otherwise treated is necessary to help us evaluate remedial alternatives.

We are anxious to resolve the relationship and responsibility of Cotter regarding this material as expeditiously as possible. Please advise me regarding your ability to respond to our outstanding questions. Should you have any questions or wish to discuss our concerns, please call me on 312-294-4416.

Very truly yours,



George P. Rifakes
President, Cotter
Corporation

FFP 11 1990

FEB 21 1990

Docket Nos. 40-8035
40-8801

Cotter Corporation
ATTN: Mr. George Rifakes
President
P.O. Box 767
Chicago, Illinois 60690

Dear Mr. Rifakes:

In my letter dated October 25, 1989, I stated that remedial action is called for at the West Lake Landfill and requested to be advised what your plans are for further site characterization and evaluation of what remediation is appropriate.

In further communication since then, you have requested guidance on the appropriate standards for decontamination in order to determine the options and the choice for remedial action. We have concluded that the requirements for disposal of uranium mill tailings in 10 CFR Part 40, Appendix A are appropriate for disposal of the radioactive material which is in the West Lake Landfill. The disposal should include the material with concentrations of thorium-230 (Th-230) greater than 15 pCi per gram of soil.

The appropriate decontamination criteria for property to be released for unrestricted use are in Criterion 6 of Appendix A to 10 CFR Part 40. The Criterion 6 guidance specifies cleanup to less than 5 pCi radium-226 (Ra-226) per gram of soil averaged over the first 15 cm below the surface, and 15 pCi Ra-226 per gram averaged over 15-cm thick layers more than 15 cm below the surface. In the particular case of the West Lake Landfill, where the ratio of Ra-226 to its precursor, Th-230 is far from equilibrium, the concentration limit of 15 pCi/g should also be applied to the Th-230; this provides for the future ingrowth of Ra-226 due to the radioactive decay of Th-230.

Mr. George Rifakes

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Given these criteria for remedial action, please advise me in 30 days of your plans and schedule for consideration of options and the selection of remedial action.

Sincerely,

(Signed) Robert M. Bernero

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

cc: Edward J. McGrath, Esq.
Holme Roberts and Owen
1700 Lincoln, Suite 4100
Denver, Colorado 80203

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(COTTER CORP./1)

*see previous concurrence

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